

From: Kevin Theobald
To: Microsoft ATR
Date: 1/23/02 12:36pm
Subject: Microsoft Settlement

I am a U.S. professor of Computer Engineering with industry experience in software engineering, and I would like to register my opposition to the proposed settlement in the Microsoft antitrust case. I have examined the proposal, and it fails to address the problems of Microsoft's monopoly position in many important ways.

For instance, the settlement contains prohibitions intended to curb some of Microsoft's current anti-competitive practices, but relies on definitions that are too restrictive and provide too many loopholes. As one with experience in software development, I can see many ways to exploit these loopholes in order to circumventing the restrictions. For instance, Section III(J) allows Microsoft to keep security-related APIs secret. It is easy to see that Microsoft will simply declare that every API now includes security features (recent Microsoft announcements that they will focus more on security suggest they are already planning this). Microsoft has a proven track record of creatively exploiting every loophole imaginable. Their integration of Internet Explorer into their OS in order to bypass the "Consent Decree" is one example of how much they can be trusted to follow the "spirit" of an agreement.

The settlement does not punish past behavior already proven illegal in court or remedy the effects, but merely restricts Microsoft from continuing some of this behavior in the future. This sends the message that illegal behavior is tolerated and profitable until eventually stopped by a court, and will only encourage further lawbreaking by Microsoft and other potential monopolists. Furthermore, the enforcement mechanism is also very weak, and relies on a Technical Committee which is at best prone to chronic deadlock since Microsoft effectively has 50% control.

In conclusion, the current proposed settlement is worse than no settlement at all. It is only a fig leaf, which will present the illusion that it is restoring competitiveness to the industry while actually doing very little. Microsoft will continue to use its control of the OS to gain control of other markets, while claiming that competitors and consumers are now duly protected by the law.

Sincerely,

Dr. Kevin B. Theobald